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THE METHODIST MISSION CLAIM TO THE DALLES TOWN SITE*

By Mrs. R. S. Shackelford, The Dalles

In the spring of 1838 Rev. Jason Lee, the superintendent for the Missionary Society of the Methodist Episcopal Church, sent to a place known as Wascopum the Rev. Daniel Lee and Rev. H. K. W. Perkins to establish a mission at that point. It was situated where the city of The Dalles now lies, and it will be seventy years this spring since the establishment was started.

In 1844 Lee and Perkins left the mission for the East and Rev. A. F. Waller entered upon the work about that time. "Mr. H. B. Brewer had been there since 1840, and the mission had accumulated quite a little stock and built six plain, moderate-sized buildings on the premises. The dwelling house was a frame filled in with adobe; the church, school-house, barn, storehouse and workshop were log, all of which were estimated to cost about $4000.00 and were built mostly by Indian labor, and there were about 70 acres under some kind of an enclosure.

In 1844 Rev. George Gary superseded Jason Lee as superintendent of Oregon missions, with instructions to reduce the cost of expenses, with the result of closing up all missions in Oregon except that one at The Dalles. The mission property in Willamette valley was sold to the Oregon Institute and to the laymen who had been dismissed from the service of the Society. Hines states that these sales amounted to twenty-six thousand dollars. By 1847 Mr. Gary had disposed of nearly all the livestock at The Dalles station and was trying to negotiate with Dr. Whitman of the American Board Mission for the sale of the station itself. In the same year before that had been consummated, the Rev. William Roberts succeeded Mr. Gary, and an agreement was finally made for the transfer of the mission station to Dr. Whitman, and in September, 1847, Messrs. Waller and Brewer transferred the station, a canoe, some farming utensils, grain and household furniture for the

*Read before a meeting of the "Old Fort Dalles Historical Society," 1908.

sum of $600.00 and actual possession was given. There was a kind of understanding that religious exercises and instruction for the Indians should be kept up, but there was no legal obligation to that effect, nor did the Methodist people expect to return to occupy the station if this was not done, for they were becoming very much discouraged in regard to converting the Indian.

Dr. Whitman was supposed to have "purchased the station primarily for himself and nephew, Perrin B., to whom he promised the west half of it if he would remain and take care of it until the spring, when his uncle expected to return and make his permanent home there."

So Perrin B. Whitman, nephew of Dr. Whitman, a youth of seventeen years, was placed in charge and Dr. Whitman unfortunately returned to his own mission station at Waiilatpu, about six miles west of the present city of Walla Walla, and where he was murdered November 29, 1847. The following month, December, 1847, Perrin B. Whitman became so alarmed at reports of Indian hostilities that he left The Dalles, taking with him Mr. Alanson Hinman, whom his uncle had sent there in October from Waiilatpu, as farmer and housekeeper.

From that time on no missionary work was done at The Dalles and no missionary occupation by either the Methodist or American Board was ever maintained there. A detachment of volunteers, with young Whitman's permission, was stationed there and the provisional government continued to use it till the troops were withdrawn from the upper country after the Cayuse war closed in the summer of 1848. After that the premises remained unoccupied except by occasional "travelers and immigrants until the spring of 1850, when a military post was established there by the United States and the premises included in a military reserve."

Now, as I have endeavored to make plain, the occupancy of the mission and its changes, it is proper that I sketch the establishing of the town of Dalles City. Both claimed the site and out of these claims grew the contest.

As early as 1852 the place called The Dalles was occupied as a townsite for purposes of trade and traffic and has been so occupied ever since. In 1855 the county of Wasco, which was organized January 11, 1854, caused the site to be surveyed into lots, blocks and streets and record thereof made. "In January 26, 1857, Dalles City was made a corporation with boundaries including said townsite and on April 18, 1860, entered at the U. S. Land Office at Oregon City the fractional northwest quarter of section three in township one, containing 112 acres, and including the land so occupied as a townsite under the townsite law of May 23, 1844 (5 stat., 667; 10 stat., 306), in trust for the several use and benefit of the occupants thereof according to their respective interests and now claimed to be the owner thereof accordingly." Besides these two claims there were others which had to be settled.

Three suits were commenced in September, 1877. That one numbered 390 was: Dalles City vs. The Missionary Society of the M. E. Church; No. 391: James K. Kelly, Aaron E. Wait and Phebe Humason v. the same; No. 392: James K. Kelly and Aaron E. Wait v. the same.

As already stated, the three suits were begun in September, 1877, in the State Circuit Court of The Dalles in Wasco County. To quote from Judge Deady's decision, from which most of the following information was gathered: "The summons was served by publication, and on September 12 the defendant appeared and had the cause removed to the U. S. Circuit Court, District of Oregon, where they were all three entered on January 30, 1878. On October 15, 1879, the three causes were heard together."

The history of the claims prior to this must be explained and is as follows: When the claims came up the Commissioner of the General Land Office authorized the surveyor general to "hear and determine the conflicting claims of the Missionary Society, Bigelow, and Dalles City to the premises. On February 16, 1860, the parties appeared before him and soon after "he directed a deputy surveyor to make a survey of the premises (1) as claimed by the Society; (2) as actually occupied

by it; and (3) so as to include its improvements with 640 acres south of the bluff in substantially a square form. Plats of these surveys—the second one containing 87 acres—were forwarded to the Commissioner by the surveyor general with his decision [rendered February 2, 1861] that the society was not entitled to any portion of the premises as a missionary station. Neither of these 'plats of survey' were approved by the surveyor general in the sense of the statute, because they were each made upon a hypothesis that the society *occupied* the premises or some portion of them as a mission station on August 14, 1848, which he found not to be true. This decision was affirmed on appeal February 7, 1863, by the commissioner. From there the cause was appealed to the Department of the Interior, where it rested till 1875, when it was finally reversed. After the decision of the Secretary of the Interior, the commissioner wrote to the surveyor general advising him of such decision and directing him to furnish that office with a 'certified diagram of the claim of said Society' as confirmed by the same. In obedience to this direction the surveyor general on June 17, 1875, certified to the commissioner a diagram of the first of the three surveys as being a plat of the survey of the Methodist mission claim at The Dalles, and upon this the patent was issued as appears therefrom July 9, 1875.

As I have stated, the case was taken before Judge Deady in 1879, who again reversed the decision and ruled that this patent was void because it was not issued upon a 'plat of survey thereof' approved by the surveyor general, but upon survey made by the agent of the mission in June, 1850."

"Now, in June, 1850, the agent of the defendant went upon the ground and surveyed and marked the boundaries of the claim as he understood them to be, and in 1854 the Rev. Thomas H. Pearne, its agent, notified the surveyor general of the territory of the claim of the defendant thereto," and this is the survey on which the Secretary of the Interior issued the patent, and is also the same as was described in No. 1 of the survey of 1860 (as claimed by the Society).

Judge Deady declares "a patent could not lawfully issue upon the survey of the claim by the society itself. A survey of the grant involved the question of how much land was occupied by the mission and within what limits. To allow the society to do this would be to make it a judge in its own case." And, again, he says that "whatever then may be thought of the correctness of the survey, the proposition that the patent was issued without a 'plat of survey' approved by the surveyor general, in the face of all these facts, is not tenable."

"There does not appear to have been any survey prior to that of 1850, but the occupants and Indians doubtless understood that it should include certain points or places." Judge Deady did not think that it was ever expected, however, or intended, that it should extend north of the bluff between that and the river, a distance of about one-half mile, where were the villages and camping ground of the Indians and voyageurs up and down the Columbia River."

Another interesting point was the re-transfer from the American Board of Missions to the Methodist Mission Society in 1849. The death of Dr. Whitman had of course prevented the occupation of the station by the American Board.

The draft of $600.00 which he had given upon the American Board had never been presented, and in March or February, 1849, soon after the news of the Organic Act was received in Oregon, "an arrangement had been made between the superintendent of the M. E. Mission and Messrs. Elkanah Walker, Henry H. Spalding and Cushing Eells of the American Board for the re-transfer and cancellation of the $600.00 draft." This was done, as Judge Deady says, "not with any view of resuming missionary work, but to enable it to obtain a grant on account of its occupation prior to September, 1847. To the same end and to assist it in obtaining damages from the United States for taking a portion of the station as a military reservation, the defendant in February, 1859, obtained from the American Board a formal quit-claim to the premises, although in November, 1858, Messrs. Walker and Eells, professing to act upon a power to them from said Board dated February 28,

1852, for a nominal consideration, had conveyed the premises subject to the military reservation to Messrs. M. M. McCarver and Samuel S. White." Rev. Myron Eells once mentioned this matter to me with much regret, and said his father had corrected and amended this matter as much as it lay in his power to do so.

It was urged by the Society that their claim was valid because the U. S. Congress had passed an act June, 1860, for the relief of the Missionary Society of the M. E. Church. That was in this way: In 1854 the military reservation at The Dalles, which had covered a number of square miles, was reduced to 640 acres by order of the War Department to "be laid off in such manner as least to interfere with private rights." In the execution of the order 353 acres as surveyed by the mission agent in 1850 was included in the reservation and covered all the improvements of the mission. The Society put in a claim for compensation. This was referred to Major G. J. Rains, the post commander of Fort Dalles, who reported in favor of paying them $20,000. This was recommended to be paid by the house committee on military affairs—$20,000 for satisfaction of the claim for the land and also $4,000 for the destruction of property upon the mission claim. The committee considered from their evidence that the Society was still in "possession" of the property on that memorable August 14, 1848, while Judge Deady again emphasized the fact of non-occupancy and ignores the (to use his own words) "convenient term possession." (Act, August 14, 1848.) Now the Organic Law, which was passed on August 14, 1848 (when Oregon became a territory), contained a clause on the *Grant to Missions in Oregon* upon which much stress has been legally laid in the suits between Dalles City and the Missionary Society of the M. E. Church. To quote, the grant "is not confined to a single station to each society, but includes as many stations as were then *actually occupied* by each society for missionary purposes among the Indians." Now, note the *actual occupation* clause of the grant, for upon that peg hung all the rights of The Dalles people.

He also says that the fact of the claim being advanced by a powerful and popular religious organization for whose good will and favor the average congressman in Oregon and elsewhere has a lively regard, may not have been without its effect on the result, and continues that "in making provision for payment of this claim, cannot, under the circumstances, have any effect to invest the defendant with the title to the premises," and also rules "that all that was done amounted only to a release, and was not an admission by the United States, to whom the release was made, that the releasor—the defendant—ever had any right to either land or improvements, but only that it asserted some kind of claim thereto which it was deemed expedient to satisfy and extinguish. But since this payment of $24,000, there is no longer cause for regarding it as even morally entitled to anything from the public on account of its missionary operations at The Dalles."

"The conclusions of the court is that the defendant did not *occupy* the premises on August 14, 1848, as a missionary station or otherwise and that it was not deterred from so doing by the danger from Indian hostilities, but voluntarily abandoned the same before September 10, 1847, without any intention or expectation of reoccupying it under any circumstances, and therefore the patent to the defendant was wrongfully issued; and the decree of the court will be that the defendant be declared a trustee for the several plaintiffs herein for so much of the premises described in the patent as is claimed by them in their several suits, and that the defendant, within ninety-days, by a sufficient conveyance or conveyances, containing proper covenants against its own acts, to be approved by the master of this court, release to the said plaintiffs accordingly all right and title to said premises, and that it pay the plaintiffs their costs and expenses of suit. (Signed) James K. Kelly and N. H. Gates for plaintiffs; Rufus Mallory and John C. Cartwright for the defendants."

Thus ended the suits numbered 390, 391 and 392, but it was appealed from the Circuit Court of the United States for the District of Oregon to the Supreme Court of the United

States. Argued March 22, 1883. Decided April 16, 1883. The history of the case continued the same and the three cases were tried upon the same evidence used in the Circuit Court of Oregon, and the statement of the case by Mr. Justice Woods brings in but one new argument, which is based upon the following:

"Until the passage of the Act of 1850, called the Donation Act, no one could acquire as against the government any title to or interest in the public lands of Oregon Territory, and there could be no constructive possession of them." Before that there was no law by which any person or company could acquire title from the government except by the grant of August 14, 1848—possessory rights were not recognized." The most they could claim was the right of *actual occupancy* as against other settlers." After briefly reviewing the case, Justice Woods delivered the opinion of the Court as follows: "The decree of the Circuit Court was, therefore, right and must be affirmed." Mr. E. L. Fancher for appellant. Messrs. John H. Mitchell and James K. Kelly for appellee.

Many citizens of The Dalles paid the Missionary Society for their holdings in the town and I cannot leave this subject without a brief reference to that part of it. Mr. John C. Cartwright levied the assessment for the Board of Missions and made the settlements. In about 1886 Rev. W. G. Simpson, then pastor of M. E. Church in The Dalles, went to New York and succeeded in getting a hearing from the Board with the result that $23,000 was honorably returned to The Dalles people who had settled with the mission Board through Mr. Cartwright. In reference to suits Nos. 391 and 392 I would say that on Nov. 1st, 1853, Winsor D. Bigelow took a donation land claim of 320 acres (claim No. 40) at The Dalles and resided upon it and cultivated it until Feb. 16th, 1860. His title was derived under act of Congress of Sept. 27th, 1850, commonly called "The Donation Act," and which gave, upon certain conditions, to every white settler upon the public lands, who was over the age of 18 years and being a citizen of the United States, a half section of land if he were single or

a whole section if he were a married man. The records clearly show full compliance with the law which established his right to the land. "On Dec. 9th, 1862, he conveyed an undivided *one-third* interest of a certain 27 acres on the bluff at Dalles City, and part of his donation claim, to James K. Kelly and Aaron E. Wait, plaintiffs in *No. 391;* and on December 12th, 1864, conveyed the remaining *two-thirds* of the said 27 acres to Orlando Humason. Judge Humason died testate on Sept. 8th, 1875, having devised his interest in the 27 acres to Phoebe Humason, his widow, who became one of the plaintiffs also in *No. 391.*

On Dec. 2d, 1864, Mr. Bigelow conveyed to James K. Kelly and Aaron E. Wait 46 town lots, part of his donation claim and situated in "The Bluff Addition to Dalles City," which as plaintiffs they claim in suit numbered *392.*"

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1 I am greatly indebted to the late Rev. Myron Eells, whom I visited some years ago on the Skokomish Reservation where he was Indian agent for many years, also to a valuable little book by Mr. H. B. Brewer, who lived, as farmer, at The Dalles mission from 1840 to 1847, and to the son of Rev. Thomas H. Pearne, whom I met at Umatilla some years ago and who was here as a boy with his father, who was agent in the 50's for the missionary society.